IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.229 of 1996

1. M/s. Rajaram Estates, a
registered Partnership firm with
Office at Suvarna Bandekar Bldg.,
Vasco-da-Gama, Goa.

2. Mr. Suvarna Bandekar,
Industrialist, Indian National,
residing at Vasco-da-Gama, Goa. .... Petitioners.

Vs.

1. Union of India,
through the Secretary,
Ministry of Defence,
New Delhi 110 011.

2. State of Goa,
through the Secretary,
(Revenue), Secretariat,
Panaji, Goa.

3. Collector of South Goa,
with Office at Collectorate Bldg,
Margao, Goa. .... Respondents.

Mr. J.E. Coelho Pereira, Sr. Advocate with Mr. J. Godinho, Advocate for the petitioners.

Mr. J. Vaz, Addl. Central Govt. Standing Counsel, for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Addl. Govt. Advocate for respondents No.2 & 3.

CORAM : F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : AUGUST 6, 2003.

ORAL JUDGMENT : (Per REBELLO, J.)

The petition was originally filed seeking to challenge the Notification dated 16.3.1992 published in

the Official Gazette, Government of Goa dated 15th September, 1993. That Notification was issued pursuant to the power conferred by Section 3 of Works of Defence Act, 1903 (hereinafter, referred to as "the Act"). The Notification sets out that Central Government hereby declares that it is necessary to impose restrictions specified in clause (b) of Section 7 of the Act upon the use and enjoyment of land situated in Village of Chichalim, Mormugao Taluka, in State of Goa. It included Survey No.126, admeasuring 20350 sq. metres, which land is claimed by the petitioners herein. In the alternative, a prayer was sought to direct the respondents to comply with the requirements of the said Act to render an award in the matter as contemplated under the Act.

It was the case of the petitioners that they had applied to the Asst. Town Planner who directed them to approach the Flat Officer, Commanding Navy to issue a N.O.C. for development of the said property at the earliest. In reply, by letter dated 8.1.96, the Flag Officer Commanding (Goa) informed them that on scrutiny of the letter of the petitioners, it was found that the land in survey No.126/1 which was requested for development fell within the area notified under the Govt. of India Gazette for keeping the land free from

building and other obstructions. That being restricted area, any development in the area was not recommended. It is the petitioners case that only then did they come to know about the said notification. The other averments need not be adverted to as, in the meantime, an Award came to be passed on 16.3.2001, pursuant to Orders of this Court dated 21.7.2000. The petitioners have thereafter, amended the petition contending that inspite of the fact that the Award was rendered, the petitioners have not been paid or deposited the amount due and payable to the petitioners under the said Award. As the delay is contumacious and the petitioners have been deprived of enjoyment of the said property without any compensation being paid, they would be entitled to interest on the amount awarded in the sum of Rs.32,764/-. It has also come on record that the petitioners have preferred a reference against the said Award by letter dated 25.6.2001. The additional reliefs sought for are that the respondents be directed to pay interest to the petitioners at such rate as this Court deems fit and proper from the date of Notifications under Sections 3 and 7 of the Act until the date of payment or deposit in the Court and further the respondents be ordered and directed to pay to the petitioners the amount with interest as provided under Sections 23(2), 24 and 34 within the time frame, and

further direct that the reference be disposed of expeditiously.

2. On behalf of the respondents, an affidavit came to be filed by Commodore Kandathil Paul Mathew. Some technical queries are raised, which we do not propose to advert to. It is pointed out that the notification was published in the official Gazette of the Government of Goa on 15.9.1993 and considering the provisions of the Act, they had time upto 15.9.1996 and in view of this, if petitioners had any grievance, they ought to have approached the District Collector, Margao. It is also pointed out that the stipulated period as provided under Section 9 was not over. There is an additional affidavit filed by Commodore Virendra Singh on 4.8.1990 justifying as to why the Notification had to be issued. There is subsequent affidavit by Mr. P. Krishnamurthy, Collector of South Goa setting out therein that the process of making an award was on.

3. The real controversy which now remains is a limited issue as to whether the petitioners are entitled to claim any interest on the amount of damages, from the date of Section 3 Notification till the date of Award or payment. Order of this Court dated 21.7.2000 records that prayer Clause (a) has been given up and the

petitioners therefore restrict their claim regarding interest which was not given upp.

4. The Works of Defence Act, 1903 in the preamble sets out that it is enacted with a view of imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions and for determining the amount of compensation to be made on account of such imposition. Section 3 of the Act, is the power conferred by the Central Government whenever it finds necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, to issue a declaration. The section further provides for the manner in which the declaration must be issued. Under Section 12, on the day fixed under Section 9 or on any other day for which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to the notice given under Section 9 to the measurements made under Section 8, and into the decrease in the value of the land, and into the respective interest of the persons claiming the

compensation, and shall make an award under his hand. Apart from amounts under Section 12, the compensation has to be paid which in the opinion of the Collector, would be allowed for any damages caused or to be caused under Section 6 and for any restrictions imposed under Section 7. Section 13, is the power of the Collector to make an award. A person aggrieved, has right of reference under Section 18. Section 23, are the provisions which the Collector has to bear in mind while awarding the compensation. Section 34 provides that if the amount of any compensation awarded under the Act if it is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at the rate of 6% per annum from the date of award until it is so paid or deposited. These are the various steps contemplated by the Act itself in determining the compensation, namely apart from paying compensation for the land acquired, the Collector has also to bear in mind the provisions of Sections 6 and 7 of the Act and to award damages in favour of the petitioner, in the circumstance set out therein, if proved. Under Section 34, once the award is made till the amount is paid, interest is payable as set out at the rate of 6 % per annum. This is basically the scheme of the Act for payment of compensation.

5. On behalf of the petitioners, their learned Counsel contends that the action of the respondents in issuing the Notification under Section 3 and thereafter not taking steps for a long time is arbitrary and contrary to the law on account of the notification and the petitioners could not use their land, and as such, the petitioners are entitled to be paid compensation along with interest for the said period. It is pointed out that this Court in exercising its extra-ordinary jurisdiction under Article 226 of the Constitution can so award compensation or interest. Reliance for that purpose is placed on the Judgment in the case of **Ved Prakash and others vs. Union of India and others,** 1995 (s) SCCs 45. In that case, the issue before the Apex Court was acquisition of land under the provisions of the Land Acquisition Act. The declaration under Section 6 was made in the year 1966/1969; awards made in the year 1980/1981/1983. The Notification under Section 4 itself had been issued in between 1959/1965. The challenge to the Notification by the land owners was after a period of 14/21 years. The Apex Court held that inaction on the part of the respondent State was not justified, but considering the facts of that case, and as the petitioners approached the Court with long delay and development had already been made on the land, quashing of the acquisition proceedings would not be

appropriate and instead awarded additional compensation at the rate of 12 % per annum for the period beyond August 23, 1974. Relying on this Judgment, it is pointed out that this Court in exercise of its jurisdiction under Article 226, considering the injury caused to the petitioners, could award interest.

6. The question really is whether there is any lacunae between the various periods, when a party like the petitioners is left unprotected in view of the Notification under Section 3. We have already referred to Section 12 of the Act, under which while making the award, apart from other considerations, the Collector is bound to award the compensation which in his opinion should be allowed for any damage caused or to be caused under Section 6 and for any restrictions imposed under Section 7. In other words, between the date of the Notification and the passing of the award, there is power in the Collector to compensate a land owner whose land has been notified under Section 3 and quantify the damages. Once the award is made, then the Act itself provides that the amount as awarded will carry interest at the rate of 6 % per annum. Therefore, in so far as the period after the award is concerned, it will really not be within the jurisdiction of this Court to grant interest more than what the statute itself provides for.

The Court cannot depart from the provisions of the statute. At the highest, if there is any lacuna, the Court may make attempt to fill in the lacuna. In so far as interest for the period between the date of the notification and the award, there is no provision for payment. It is now a well settled proposition of law that in so far as damages are concerned, it is not an ascertained amount. Once it is not an ascertained amount, no interest would be payable till such time the amount is ascertained and damages quantified. The amount would be ascertained when award will be passed. (See **Union of India vs. Raman Iron Foundry**, A.I.R. 1974 S.C. 1265) It is, therefore, clear that a land owner or the person interested in land in respect of which Notification is issued, is protected from the date of Section 3 till the date of the Award. In the circumstances, there is no jurisdiction in the Court to award compensation or interest when the act itself provides for the manner of awarding compensation and the interest to be awarded under Section 34. Even if there was some inaction on the part of the petitioners, that, by itself, would not give a cause to the petitioners to maintain a petition for interest on the said amount. We are of the opinion that the principles laid down in **Ved Prakash and others** (supra) and other similar cases cannot extend to the provisions of the Works of Defence

Act, 1903, considering the scheme of the Act and the manner of payment of compensation.

In the light of that we find no merit in this petition. Rule stands discharged. There shall be no order as to costs.

F.I. REBELLO, J.

P.V. HARDAS, J.

ssm